

Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

FAIR HOUSING CENTER OF
WASHINGTON,

Plaintiff,

v.

BREIER-SCHEETZ PROPERTIES, LLC, a
Washington corporation; and FREDERICK
BREIER-SCHEETZ, an individual,

Defendants.

No. C16-922-TSZ

**PLAINTIFF'S REPLY BRIEF IN
SUPPORT OF ITS PETITIONS FOR
CIVIL CONTEMPT**

By Minute Order dated December 17, 2018 (Dkt. # 99), this Court lifted the stay previously imposed on Plaintiff's Petition for an Order to Show Cause and gave the Defendants leave to file a supplemental response to Plaintiff's Second Petition for an Order to Show Cause. The Defendants have not filed a supplemental response. The facts alleged in Plaintiff's First and Second Petitions for an Order to Show Cause remain unrefuted.

Plaintiff's Reply

Plaintiff continues to seek a civil remedy of actual and punitive damages, as authorized by the Fair Housing Act, for the Defendants' year-long intentional violation of this Court's injunction and for their continued reckless disregard for the rights of the Plaintiff and of families with children.¹ During this time, the Defendants continued to violate the Fair Housing Act by

¹ In light of Defendants' purported removal of their occupancy restriction on their smaller studio apartments at the Granada, Plaintiff no longer seeks coercive incarceration to force the policy change.

1 prohibiting families with children from occupying studio units at the Granada Apartments. The
 2 statutory remedies available under the Fair Housing Act are recoverable under these two civil
 3 contempt proceedings. *S. Suburban Hous. Ctr. v. Berry*, 186 F.3d 851, 854 (7th Cir. 1999).² It
 4 should not be necessary for the Plaintiff to be forced to file a separate action and re-litigate the
 5 very issues that this Court resolved in its favor in the instant case.

6 These Defendants continued to violate this Court's Orders even after the first Petition for
 7 Contempt was filed and after this Court had made it clear to Defendants that their failure to
 8 modify their one-person for efficiency units policy violated the Court's injunction. Counsel for
 9 Defendants admitted to the Ninth Circuit Court of Appeals that Defendants had never changed
 10 their illegal policy.³ This, after a \$100,000 punitive damage award had been entered against
 11 Defendants by the trial court and after the first Contempt of Court Petition seeking \$1,000,000 in
 12 punitive damages had been filed.

13 The remedy that Plaintiff seeks, a monetary award of \$5,000,000, is both remedial and
 14 coercive. The Court in *Hicks on Behalf of Feiock v. Feiock*, 485 U.S. 624, 635, 108 S.Ct. 1423,
 15 1431, 99 L.Ed. 2d 721 (1988), reasoned that "In contempt cases, both civil and criminal relief
 16 have aspects that can be seen as either remedial or punitive or both: when a court imposes fines
 17 and punishments on a contemnor, it is not only vindicating its legal authority to enter the initial
 18 court order, but it also is seeking to give effect to the law's purpose of modifying the
 19 contemnor's behavior to conform to the terms required in the order."

20 The remedy sought by the Plaintiff is designed to effectuate the statutory scheme of the

21 ² *South Suburban Housing Center v. Berry*, 86 F.3d 851, 854 (7th Cir. 1999), was a civil
 22 contempt proceeding against a realtor who continued to discriminate in violation of a Consent
 23 Decree that contained injunctive relief that prohibited continued violations of the Fair Housing
 24 Act. The District Court had granted additional actual damages but denied additional attorney's
 25 fees because of the defendant's alleged penury. Punitive damages were not at issue in the
 26 contempt, presumably because of the financial condition of the defendant. This is not a factor
 27 here where the Defendants own real estate assets valued in excess of \$100,000,000.00.

³ *Fair Hous. Ctr. of Washington v. Breier-Scheetz Properties, LLC*, 743 F. App'x 116, 118 n.2
 (9th Cir. 2018) ("The district court also entered an injunction on October 6, 2017, ordering
 Breier-Scheetz to change its occupancy policy. Though not relevant to our review of the district
 court's award of punitive damages, as of the date of oral argument on October 10, 2018, Breier-
 Scheetz still had not complied with the injunction by changing its occupancy policy.").

1 Fair Housing Act. The fact that the Defendants have now agreed to alter their occupancy policy
 2 with regard to the efficiency apartments at the Granada will likely have little, if any, effect on
 3 their willingness to comply with the FHA with regard to their other units or other properties in
 4 the absence of an effective monetary remedy. Why should they if they can violate the law, then
 5 ignore the Court's injunction, and only after losing on appeal do they finally conform their
 6 conduct to the law with no other consequences?

7 It would undermine the force of the Court's injunction and authority to decline to award
 8 statutorily authorized remedies, such as actual and punitive damages, for Defendants' deliberate
 9 year-long violation of the Fair Housing Act in the face of the injunction. The Court of Appeals
 10 affirmed this Court's ruling that engaging in discrimination in the face of a perceived risk that his
 11 or her actions will violate federal law constitutes reckless indifference justifying the imposition
 12 of punitive damages. The fact that Breier-Scheetz did not change its occupancy policy in the
 13 four months between the District Court's finding that they were violating the Fair Housing Act
 14 and the bench trial on damages was held sufficient to justify the \$100,000 punitive damage
 15 award. *Fair Housing Center of Washington*, 743 F. App'x at 118. That award did nothing to
 16 change the Defendants' conduct, perhaps because it constitutes only one-tenth of one percent
 17 (.1%) of the value of their holdings. Defendants' conduct makes plain that it will take a much
 18 more substantial award to insure future compliance with the law.⁴

19 DATED this 4th day of January 2019.

20 MacDONALD HOAGUE & BAYLESS

21 By: /s/ Jeffrey L. Taren

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25 *Attorneys for Plaintiff*

26 _____
 27 ⁴ This Court may always determine that the Defendants' willful violation of its Order rises to the
 level of criminal contempt and initiate criminal contempt proceedings.

CERTIFICATE OF SERVICE

I certify that on the date noted below I electronically filed this document entitled *Plaintiff's Reply In Support of Its Petitions for Contempt* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participant:

George T. Hunter: gthunter7700@gmail.com

Dated: January 4, 2019

/s/ Jeffrey L. Taren

Jeffrey L. Taren, WSBA #50275